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WRITER'S DIRECT DIAL NUMBER

October 6, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 97-178

Dear Mr. Caton:

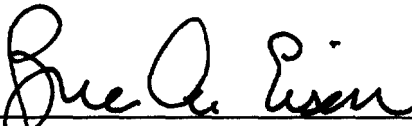
On behalf of Historic Hudson Valley Radio, Inc., there is transmitted herewith and filed an original and four (4) copies of its "Comments" with regard to the Notice of Proposed Rulemaking and Order to Show Cause released August 15, 1997.

Should any questions arise with regard to this matter, kindly communicate with the undersigned.

Very truly yours,

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER, LLP

By:


Bruce A. Eisen

Enclosure

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-178
Table of Allotments)	RM-8329
FM Broadcast Stations)	RM-8739
(West Hurley and Rosendale,)	
New York, North Canaan and)	
Sharon, Connecticut))	

TO: Chief, Allocations Branch

COMMENTS OF HISTORIC HUDSON VALLEY RADIO, INC.

Historic Hudson Valley Radio, Inc. ("HHV"), by its attorneys, hereby submits its comments with regard to the above-referenced Notice of Proposed Rulemaking and Order to Show Cause, DA 97-6297 (Chief, Allocations Branch, released August 15, 1997).

In support thereof, the following is shown:

1. HHV is the licensee of Stations WGHQ(AM) and WBPM(FM) at Kingston, New York. Over the past few years, a significant number of new radio broadcast stations have either begun to operate, or are proposed to begin operating, in the Kingston area. While that, by itself, is not a reason to oppose the possible advent of a new station, nevertheless, HHV strongly

believes that any proponent of a new FM allocation must make an adequate showing that the proposed "community" is deserving of a broadcast service. Raymond A. Natole's request to allot Channel 255A to West Hurley, New York, falls far short of what is necessary.

2. In the NPRM, the Chief, allocations Branch, addresses the question of whether or not West Hurley is a community for allotment purposes. Sacred Heart University, Inc., which has requested a competing allotment for North Canaan, Connecticut, questioned the status of West Hurley. See, NPRM, paragraph 4. Nevertheless, the Allocations Branch concluded that Natole's proposal warranted consideration, largely because Sacred Heart had submitted insufficient information.

3. HHV urges the Commission to adopt the position taken by Sacred Heart and to find that West Hurley is not a "community" for allotment purposes. While it is entirely true that West Hurley is a Census Designated Place, that fact, alone, merely raises a presumption of community status. The presumption may be rebutted with information showing a lack of community indicia. That is the purpose of these comments.

4. Attached hereto is the declaration of HHV principal, Walter Maxwell. Mr. Maxwell recites that having done a survey of "West Hurley", he concluded that there were no definable boundaries, that there was no form of local government, no separate telephone three-digit exchange and severe restrictions on future construction. Indeed, it appears that "West Hurley" has lost its identity for several generations, and that it largely relies on the Town of Hurley for its basic needs.

5. The fact that "West Hurley" is a CDP should not be dispositive. To approve this proposed allotment merely because the Census recognizes West Hurley, is to elevate form over substance. Rather, Natole should be compelled to provide adequate information in order to establish that "West Hurley" is a geographically identifiable population grouping. He should provide the testimony of local residents, or submit other objective materials demonstrating that "West Hurley" functions as a specific "community". Absent such specificity, and in light

of the information provided by Mr. Maxwell, the allotment should be denied.

Respectfully submitted,

HISTORIC HUDSON VALLEY RADIO, INC.

By: 

Bruce Eisen
Its Attorney

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP
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October 6, 1997

DECLARATION OF WALTER MAXWELL

I, Walter Maxwell, under penalty of perjury, hereby declare as follows:

I am the owner of the licensee of Stations WGHQ/WBPM(FM) at Kingston, New York.

I have done a survey of the characteristics of West Hurley, New York, in order to ascertain whether or not West Hurley had the elements of a "community". The following represents my research findings.

In order to adequately review the characteristics of West Hurley, I first had to define its physical location. This was difficult to do because West Hurley is unincorporated, and no one, including the Town of Hurley Clerk's Office, had a map showing West Hurley's boundaries. The Town of Hurley is a recognizable community in the area, and should not be confused with "West Hurley". Based on my knowledge of the area, the cluster of houses along Route 28 is what most people think of as West Hurley, but I believe it extends south of the Ashokan Reservoir. Nevertheless, there is no clear geographical determination that I was able to rely upon for my research.

The 1990 U.S. Census does include West Hurley as a Census Designated Place with a population of 2,252. I believe that total aggregates people from both north and south of the Ashokan. It is interesting to note that the United States Government appears also to be confused about West Hurley's borders since its on-line map shows all of West Hurley to be north of the Ashokan. On the contrary, the post office includes the property south of the Ashokan Reservoir as encompassing West Hurley. Moreover, homes in the northern half of what the United States Government refers to as "West Hurley" have Woodstock, New York mailing addresses.

Other matters which diminish the community status of this area include the facts that the telephone company has determined that West Hurley is not large enough to assign an exclusive three-digit exchange. The 679 prefix is shared with four other towns: Woodstock, Willow, Shady and Bearsville. New York City owns the property on the south side of Route 28, and no construction is allowed on its watershed. Hence, there is little likelihood of any expansion or creation of businesses in the immediate area.

I was able to uncover certain historical information. According to Peter Sinclair in his 1989 A Short History of

Hurley, New York, the construction of the Ashokan Reservoir resulted in the physical relocation of West Hurley, and the new village never again developed a main street or central district. West Hurley grew up as a quarrying town on a railroad route. It lost its identity in the early 1900s at a time when New York City was running out of water and seized land upstate to build reservoirs, including the Ashokan. Trains have stopped running through West Hurley, and the quarrying industry declined with the growth of the cement industry.

West Hurley has no government of its own. Its elected officials are from the Town of Hurley. The town hall is approximately seven miles away, adjacent to the nearest State Police Barracks. The nearest significant roadways, Routes 28 and 375, are maintained by the New York State Department of Transportation. Route 43, another road, is maintained by the Ulster County Department of Public Works, and the remainder of the local streets by the Town of Hurley Highway Department. There are two elementary school buildings within the area, but they are part of the Onteora School District, and the student population is in no way limited to persons who reside in what would be considered West Hurley. There is no town water or sewer maintenance or authority. Some homeowners have formed a water

cooperative and installed a fire hydrant; there is no garbage pickup.

There is a library which is located in West Hurley, but there are no books about West Hurley; there appear to be no local festivals; and although the Town of Hurley activity calendar for September listed approximately 20 events, none of them were scheduled to occur in West Hurley. There are no West Hurley business or social organizations, although there is a volunteer fire department. There are no restaurants or other gathering places. Two churches are located within the area.

I was able to identify one industry in West Hurley: Auto-Ordnance Arms and its sister company, Gun Parts Corporation. There are a few other businesses scattered within the area of West Hurley, including a small market, drug store, liquor store and a convenience store.

Respectfully submitted,


WALTER MAXWELL

October 3, 1997

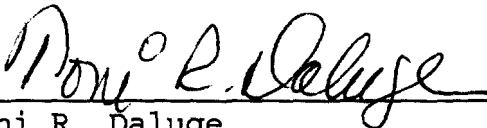
CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the Law Office of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 6th day of October, 1997, a copy of the foregoing "Comments of Historic Hudson Valley Radio, Inc." was sent via regular United States mail, postage prepaid, to the following:

Mark Lipp, Esq.
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Ave, N.W.
Washington, D.C. 20036

Mr. Raymond A. Natole
P. O. Box 327
Shokan, New York 12481

Leslie K. Shapiro, Esq. *
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Federal Communications Commission
2025 M Street, N.W.
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Toni R. Daluge

* Via Hand Delivery